



The Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: Rice Services Ltd.

File: B-227119

Date: July 28, 1987

DIGEST

Agency's decision to cancel solicitation 3 weeks prior to closing date for receipt of step-one technical proposals under a two-step procurement and to continue performance in-house pending future issuance of revised solicitation will not be reviewed, since decision whether to perform in-house generally is matter of executive policy not within protest function.

DECISION

Rice Services, Ltd. protests the cancellation of solicitation No. N62467-87-B-1034, issued by the Department of the Navy to obtain various repair, maintenance and minor construction services to be performed at the Marine Corps Air Station, Beaufort, South Carolina and Corps housing at Laurel Bay, South Carolina. The solicitation was canceled 3 weeks before the date set for receipt of the step-one technical proposals under this two-step procurement. Rice contends that the cancellation was without proper justification or concern for the small business firms such as itself that prepared their proposals in good faith.

We dismiss the protest.

The solicitation was issued on January 26, 1987 and was a 100 percent set-aside for small business firms. The prospective bidders were advised that the procurement was part of a cost comparison authorized by the Office of Management and Budget Circular No. A-76 to determine whether it was more economical to have the work performed in-house or by a contractor. The amended closing date for receipt of the step-one technical proposals was May 19. Prior to this

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date, however, the Navy determined that six additional functions should be added to the A-76 study. These additional functions were services relating to motor vehicle operation, motor vehicle maintenance, fueling aircraft, grounds maintenance and family housing maintenance. The contracting officer decided that it was impracticable to amend the solicitation to include these additions because of their magnitude and therefore canceled the solicitation on April 27. The record indicates that it may take 1 year to issue a revised solicitation and thus the work will be performed in-house for this period.

As a general rule, our Office does not review an agency decision concerning whether work should be performed in-house or by a contractor, since we regard this to be a matter of executive branch policy not within our protest function. Jets, Inc., 59 Comp. Gen. 263 (1980), 80-1 CPD ¶ 152; Crown Laundry and Dry Cleaners, Inc., B-194505, July 18, 1979, 79-2 CPD ¶ 38.

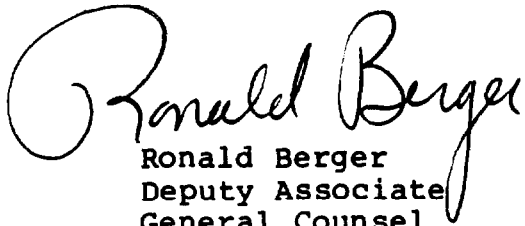
We have, however, recognized a limited exception to this rule and found review to be appropriate when an agency utilizes the procurement system to aid in its in-house/contract-out determination. Where an agency notifies offerors of cost comparison procedures it intends to use in determining whether it will or will not award a contract, we will review an allegation that the agency did not follow the guidelines it established. Midland Maintenance, Inc., B-202977.2, Feb. 22, 1982, 82-1 CPD ¶ 150. Such review is undertaken because we believe it would be detrimental to the procurement system if, after the submission of offers, an agency were permitted to alter the procedures it had established and upon which bidders had relied. Jets, Inc., supra.

We do not believe the facts presented here fit within the limited exception described above. Here, no offers were submitted and the Navy will perform the work in-house for the period until a revised solicitation is issued. No cost comparison procedures were used and the Navy did not wait until proposals were submitted before making its decision to cancel. Rather, the solicitation was canceled 3 weeks prior to the established closing date for submission of initial offers.

In this case, where an agency cancels the procurement before offers are due and determines not to use the procurement system to determine whether the work should be performed in-house, review by our Office is not appropriate. Accordingly, the general rule that a decision to perform work in-house is a policy matter within the province of the executive branch and not within our protest function is

applicable. See Schonstedt Instrument Co., B-215531,
Aug. 1, 1984, 84-2 CPD ¶ 141.

Rice requests its proposal preparation costs. Under our Bid Protest Regulations, a protester's entitlement to reimbursement of its costs is based on our determination that an agency's procurement actions were in violation of applicable statute or regulation. 4 C.F.R. § 21.6(d) and (e) (1986). Since we are dismissing Rice's protest without deciding the merits of its protest, there is no basis to allow proposal preparation costs.


Ronald Berger
Deputy Associate
General Counsel